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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT TACOMA

9 MUHAMMED TILLISY,

10 Plaintiff,

11 v.

12 WASHINGTON STATE
13 DEPARTMENT OF CORRECTIONS, et
14 al.,

Defendants.

CASE NO. 18-5695 RJB-JRC

ORDER DENYING APPEAL

15 This matter comes before the Court on the Plaintiff's Motion to Appeal to the District
16 Court Judge. Dkt. 110. The Court has considered pleadings filed regarding the appeal and the
17 remaining record.

18 The Plaintiff brings this case under the Americans with Disabilities Act ("ADA"), the
19 Rehabilitation Act ("RA"), and the U.S. Constitution (including for violations of his Eighth and
20 Fourteenth Amendment rights) in connection with the Defendants alleged failure to properly
21 accommodate the Plaintiff's hearing and visual impairments. Dkt. 17.

22 Plaintiff now appeals the U.S. Magistrate Judge's decision (Dkt. 109) to deny his motion
23 to compel, motion for reconsideration, and his motion for court appointed counsel. Dkt. 110.
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1 Plaintiff complains that he is in transit between institutions and is not being given adequate
2 access to his legal materials. Dkt. 110.

3 For the reasons stated below, Plaintiff's appeal should be denied and the case should be
4 re-referred to the Magistrate Judge.

5 **Standard for Appeal of Order of Magistrate Judge.** Fed. R. Civ. P. 72 provides in
6 relevant part as follows:

7 **(a) Nondispositive Matters.** When a pretrial matter not dispositive of a party's claim or
8 defense is referred to a magistrate judge to hear and decide, the magistrate judge must
9 promptly conduct the required proceedings and, when appropriate, issue a written order
10 stating the decision. A party may serve and file objections to the order within 14 days
after being served with a copy. A party may not assign as error a defect in the order not
timely objected to. The district judge in the case must consider timely objections and
modify or set aside any part of the order that is clearly erroneous or is contrary to law.

11 **Appeal of Order Denying Motion to Compel.** The Order of the U.S. Magistrate Judge
12 denying the Plaintiff's motion to compel (Dkt. 109) should be affirmed. The Magistrate Judge
13 properly found that the Plaintiff's demand, that the Defendants pay for all the discovery, is not
14 required under the Federal Rules of Civil Procedure. Further, the court accurately found that the
15 Plaintiff had not demonstrated that he complied with the meet and confer requirements under the
16 rules. He points out a line in an October 30, 2019 letter to defense counsel, in which he says, "let
17 me know what your thoughts are, or set up another conference call, it is up to you," (Dkt. 99-1, at
18 20), as evidence that he did, in fact, meet and confer. As stated in the Magistrate Judge's
19 decision, this is not sufficient under the rules. The Plaintiff fails to demonstrate that this order is
20 clearly erroneous or is contrary to law.

21 **Appeal of Order Denying Motion for Reconsideration.** The Order of the U.S.
22 Magistrate Judge denying the Plaintiff's motion for reconsideration as moot (Dkt. 109) should be
23 affirmed.

1 The magistrate judge denied the Plaintiff's motion for reconsideration as moot. The
2 order granted the Plaintiff an extension of time to respond to the motion for summary judgment.
3 The Plaintiff has failed to show that the decision to deny the motion for reconsideration as moot
4 was clearly erroneous or contrary to law.

5 **Appeal of Order Denying Motion for Court Appointed Counsel.** The Order of the
6 U.S. Magistrate Judge denying the Plaintiff's motion for court appointed counsel (Dkt. 109)
7 should be affirmed.

8 Under 28 U.S.C. § 1915(e)(1), the court may request an attorney to represent any person
9 unable to afford counsel. Under Section 1915, the court may appoint counsel in exceptional
10 circumstances. *Franklin v. Murphy*, 745 F.2d 1221, 1236 (9th Cir. 1984). To find exceptional
11 circumstances, the court must evaluate the likelihood of success on the merits and the ability of
12 the plaintiff to articulate the claims pro se in light of the complexity of the legal issues involved.
13 *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983).

14 Plaintiff has not shown that that the Magistrate Judge's order was clearly erroneous or
15 contrary to law. Plaintiff's success on the merits is an open question. He can articulate his
16 positions adequately and raise issues to the court. Plaintiff's claims are not complex. The Order
17 of the U.S. Magistrate denying the Plaintiff's motion for court appointed counsel (Dkt. 109)
18 should be affirmed.

19 **Re-Referral.** This case should be re-referred to Magistrate Judge Creatura.

20 It is **ORDERED** that:

- 21 • Plaintiff's Appeal to District Judge (Dkt. 110) **IS DENIED**;
- 22 • The Order of the U.S. Magistrate Judge (Dkt. 109) **IS AFFIRMED**; and
- 23 • The case **IS RE-REFERRED** to the Magistrate Judge Creatura.

1 The Clerk is directed to send uncertified copies of this Order to all counsel of record and
2 to any party appearing *pro se* at said party's last known address.

3 Dated this 13th day of March, 2020.

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6 ROBERT J. BRYAN
7 United States District Judge
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